

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DOCKLIGHT BRANDS INC,

Plaintiff,

v.

TILRAY INC. and HIGH PARK  
HOLDINGS LTD,

Defendants.

CASE NO. 2:21-cv-01692-TL

**ORDER GRANTING MOTION TO  
FILE PARTIAL SUMMARY  
JUDGMENT MOTION AND  
DENYING WITHOUT PREJUDICE  
MOTION TO FILE SUBSEQUENT  
MOTION**

Plaintiff Docklight Brands, Inc. (“Docklight”) moves for leave to file a partial summary judgment motion to establish Defendants’ liability and minimum measure of damages without prejudice to its ability to file a subsequent motion later in the case. Dkt. 49. Defendants Tilray Inc. and High Park Holdings Ltd. (“Defendants”) oppose the motion and request oral argument. Dkt. 52.

The Court has determined that the motion can be decided on the papers, rendering argument unnecessary. *See* LCR 7(b)(4) (“Unless otherwise ordered by the court, all motions will be decided by the court without oral argument.”) Having carefully reviewed the papers and balance of the record, the Court grants the motion.

**BACKGROUND**

On March 22, 2022, Docklight filed a motion to dismiss Defendants’ counterclaims, affirmative defenses, and portions of Defendants’ Answer. Dkt. 18.

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2 On April 1, 2022, the parties submitted a Combined Joint Status Report and Discovery  
3 Plan, in which Docklight stated its plan to file an early partial summary judgment motion. Dkt.  
4 22. According to Docklight, the partial summary judgment motion would: (1) resolve the issue of  
5 liability by disposing of any of Defendants' surviving counterclaims and defenses; and (2) to a  
6 large extent resolve the issue of Docklight's damages by establishing its entitlement, at a  
7 minimum, to the Guaranteed Minimum Royalty ("GMR") payments that Defendants ceased  
8 making in October 2021. *Id.* at 5-6. Docklight further explained that an early settlement of this  
9 matter would be greatly facilitated by such a motion. *Id.*

10 On April 11, 2022, the Court stayed issuance of a pretrial scheduling order pending full  
11 adjudication of Docklight's pending motion to dismiss. Dkt. 24. The Court noted the parties'  
12 acknowledgement that a ruling on the pending motion could substantially affect the scope of  
13 discovery and Plaintiff's plan to file a partial motion for summary judgment thereafter. *Id.*

14 On May 27, 2022, the undersigned issued a Report and Recommendation on Docklight's  
15 motion to dismiss ("R&R"), recommending dismissal of four of Defendants' counterclaims (with  
16 prejudice) and eight affirmative defenses (six with prejudice and two with leave to amend). Dkt.  
17 40 at 39. Specifically, the undersigned recommended denial of the motion to dismiss as to  
18 Defendants' counterclaims for breach of good faith and fair dealing, breach of contract, and  
19 anticipatory breach. *Id.* As to these latter claims, the undersigned concluded that Defendants had  
20 plausibly alleged that Docklight breached the Right of First Refusal ("ROFO") and royalty rate  
21 review provisions in the License Agreement and had plausibly alleged the affirmative defense of  
22 breach of the implied covenant. *Id.* at 27. Finally, the undersigned recommended dismissal of  
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1 Defendants' affirmative defenses for failure to state a claim and prior material breach with leave  
2 to amend. *Id.* at 39.

3 Defendants filed no objections to the R&R. On July 21, 2022, District Judge Tana Lynn  
4 adopted the R&R. Dkt. 54. The Court dismissed Defendants' First, Second, Third, and Fourth  
5 Counterclaims (fraud, fraudulent inducement, unjust enrichment, and rescission) and  
6 Defendants' Second, Third, Fourth, Fifth, Seventh, and Eighth Affirmative Defenses. The Court  
7 also dismissed Defendants' First and Sixth Affirmative Defenses, with leave to amend. *Id.*

8 The Court denied Docklight's motion to dismiss as to Defendants' Counterclaims for the  
9 breach of good faith and fair dealing, breach of contract, and anticipatory breach (Fifth and Sixth  
10 Counterclaims) and denied Docklight's motion to strike portions of Defendants' answer. *Id.*

11 Although no deadlines regarding discovery have been set by the Court, the parties  
12 acknowledge that they have been diligently pursuing discovery. Defendants have served 54  
13 documents requests and 10 interrogatories, seeking discovery of documents relating to the TPB  
14 investment (relating to the ROFO claim), whether the Guaranteed Minimum Royalty ("GMR")  
15 reflected an arms-length negotiation, and any alleged misrepresentations by Defendants. Dkt. 52,  
16 pp. 8-9. According to Defendants, Docklight has produced only 236 documents and is standing  
17 on its objections to 14 of those document requests or interrogatories, which may require further  
18 motions practice. According to Plaintiff, Defendants waited seven weeks after receiving  
19 Docklight's discovery responses before raising any concerns about them and took an additional  
20 six weeks just to send a "confirming letter" after the parties met and conferred. Dkt. 56, Brown  
21 Decl., ¶¶ 2 - 8. To date, Defendants have produced only 1 document. *Id.*, ¶ 9.

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1 The parties are also engaged in ongoing discussions regarding search terms, custodians,  
2 and protocol to be used for ESI discovery. Dkt. 52, p, 9.

3 In its proposed motion for partial summary judgment, Docklight will pursue its breach of  
4 contract claims only. Docklight will file a stipulated dismissal of its negligent misrepresentation  
5 claim (against Defendant Tilray) on July 25, 2022. Dkt. 55 at 5, n.5.

## 6 DISCUSSION

### 7 A. Early SJ Motion

8 “Generally, summary judgment is inappropriate before the parties have had an  
9 opportunity for discovery.” *Sowa v. Ring & Pinion Serv. Inc.*, 2021 WL 6334930, \* 2 (W.D.  
10 Wash. Sept. 9, 2021) (citing *Garrett v. City and County of San Francisco*, 818 F.2d 1515, 1519,  
11 n.4 (9<sup>th</sup> Cir. 1987)), *report & recommendation adopted*, 2022 WL 73879 (W.D. Wash. Jan. 7,  
12 2022)). However, there is no prohibition on moving for summary judgment during discovery.  
13 Fed. R. Civ. P. 56(d) (“[A] party may file a motion for summary judgment at any time until 30  
14 days after the close of all discovery.”). Indeed, the fact that discovery “has not begun [] need not  
15 defeat a motion for summary judgment.” *Waterloo Furniture Components, Ltd. v. Haworth, Inc.*,  
16 467 F.3d 641, 648 (7<sup>th</sup> Cir. 2006) (quotations omitted) (emphasis added). This is because “early  
17 motions for summary judgment . . . can promote efficiency by narrowing issues in advance of  
18 trial.” *Van Slyke v. Capital*, 2007 WL 2385108, at \*4 (N.D. Cal. Aug. 7, 2007); *see also Searcy*  
19 *v. Anderson Erickson Dairy Co.*, 2017 WL 11180255, at \*7 (N.D. Iowa Oct. 12, 2017) (ordering  
20 early summary judgment motion on one of the plaintiff’s five claims because “[i]t would be  
21 efficient to address this issue early”).

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1 As previously noted, the Court stayed issuance of a pretrial scheduling order pending full  
2 adjudication of Docklight's motion to dismiss because the motion could, and in fact did,  
3 substantially affect the scope of claims and discovery. The Court also noted at that time that  
4 Plaintiff planned to file a partial motion for summary judgment. Dkt. 24. It is within this Court's  
5 discretion to enter a scheduling order permitting Docklight to move for partial summary  
6 judgment now without prejudice to its right to move later, on other issues, if necessary. *See*  
7 *Microsoft Corp. v. Ram Distribution, LLC*, 2009 WL 415712, at \*1 (E.D. Wis. Feb. 13, 2009)  
8 (finding that "allowing a successive summary judgment motion in this case is appropriate" and  
9 observing that "district courts are in the best position to make decisions concerning their own  
10 case management and judicial resources").

11 Here, the proposed partial summary judgment motion may resolve Defendants' claims  
12 that the GMR was "uneconomic" and not negotiated at arm's length and that Docklight breached  
13 Section 8.8 of the License by terminating it before the deadline to conduct an annual review of  
14 "royalty rates." Docklight contends that its partial summary judgment motion will demonstrate  
15 that: (1) by its express terms and as a matter of law, Section 8.8 did not apply to the GMR; (2)  
16 any obligation Docklight would have had in early 2022 was discharged before the obligation  
17 arose, by Defendants' undisputed refusal to pay any money to Docklight after July 2021; and (3)  
18 Defendants' admitted refusal to provide sales data as required by Section 8.5 of the License  
19 prevented Docklight from performing any meaningful review.<sup>1</sup>

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21 <sup>1</sup> Docklight's contemplated partial summary judgment motion will leave some issues unresolved,  
22 *i.e.*, (1) whether and to what extent Docklight is entitled to more than the GMR as the measure of  
23 damages; and (2) whether and to what extent Defendants will have a mitigation of damages  
defense.

Docklight contends that no additional discovery is necessary for the adjudication of these issues while Defendants contend more discovery is necessary. However, a need for more discovery is an argument to be made under Rule 56(d) in response to Docklight's motion for partial summary judgment, once Defendants and this Court understand the legal and evidentiary grounds on which the motion relies. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986) ("Any potential problem with [] premature [summary judgment] motions can be adequately dealt with under Rule 56[d], which allows a summary judgment to be denied, or the hearing on the motion to be continued, if the nonmoving party has not had an opportunity to make full discovery.")

For these reasons, the Court **grants** Plaintiff's motion to file an early partial summary judgment.

#### B. Successive SJ Motion

District courts in the Ninth Circuit have discretion to permit successive motions for summary judgment. *Hoffman v. Tonnemacher*, 593 F.3d 908, 911 (9th Cir. 2010). "[A]llowing a party to file a second motion for summary judgment is logical, and it fosters the 'just, speedy, and inexpensive' resolution of suits." *Id.* at 911 (quoting Fed. R. Civ. P. 1); *id.* at 912 ("Allowing a successive summary judgment motion potentially can save all concerned the far greater expenses of a trial.").

When considering whether to permit a successive motion for summary judgment, some courts in this Circuit have considered the following factors: "(1) an intervening change in controlling law; (2) the availability of new evidence or an expanded factual record; and (3) the need to correct a clear error or prevent manifest injustice." *See Kische USA LLC v. Simsek*, No.

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1 C16-0168JLR, 2017 WL 5881322, at \*3 (W.D. Wash. Nov. 29, 2017) (citations and internal  
2 punctuation omitted); *see also Brazill v. Cal. Northstate Coll. of Pharm., LLC*, No. CIV. 2:12-  
3 1218 WBS GGH, 2013 WL 4500667, at \*1 (E.D. Cal. Aug. 22, 2013) (citing *Whitford v.*  
4 *Boglino*, 63 F.3d 527, 530 (7th Cir. 1995)).

5 Defendants argue that Docklight should have one and only one opportunity to move for  
6 summary judgment or at a minimum, the Court should defer ruling on the issue of a second  
7 motion until after it has decided Docklight's initial motion. Here, the danger of a successive  
8 abusive motion is not present as Docklight seeks to file a partial summary judgment motion on  
9 its contractual claims only and the parties acknowledge that some issues will require adjudication  
10 thereafter.

11 At this juncture, however, the Court is unable to determine if a second summary  
12 judgment motion will conserve judicial resources and perhaps obviate the need for trial.  
13 Therefore, the Court shall make that determination on the filing of any second summary  
14 judgment motion. Accordingly, Docklight's motion for a leave to file a second summary  
15 judgment motion is denied without prejudice.

16 DATED this 26th day of July, 2022.

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20 BRIAN A. TSUCHIDA  
21 UNITED STATES MAGISTRATE JUDGE  
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